

COMMISSION ON HUMAN RIGHTS

SECOND SESSION

SUMMARY RECORD OF THE FORTY-THIRD MEETING

held at the Palais des Nations, Geneva, on
Wednesday, 17 December 1947, at 10 a.m.

Present:

- Chairman:** Mrs. Franklin D. ROOSEVELT (United States of America)
- Rapporteur:** Dr. C. MALIK (Lebanon)
- Members:** Col. W.R. HODGSON (Australia)
Prof. F. DEHOUSSE (Belgium)
Mr. A.S. STEPANENKO (Byelorussian S.S.R.)
Dr. C.H. WU (China)
Mr. O. LOUTFI (Egypt)
Prof. R. CASSIN (France)
Mrs. Hansa MEHTA (India)
Mr. A.G. POUREVALY (Iran)
Mr. M. KLEKOVKIN (Ukrainian S.S.R.)
Mr. A.E. BOGOMOLOV (Union of Soviet Socialist Republics)
Lord DUKESTON (United Kingdom)
Mr. A.C. VICTORICA (Uruguay)
Dr. V. RIBNIKAR (Yugoslavia)
- Secretariat:** Prof. J.P. HUMPHREY
Mr. E. LAWSON
- Specialised Agencies:** Mr. J. de GIVRY (ILO)
Mr. J. HAVET (UNESCO)
Mr. WEISS (IRO)
- Non-Governmental Organizations:**
- Category A:** Miss Toni SENDER (American Federation of Labor)
Mr. Robinet de CLERY (Inter-Parliamentary Union)
Mr. SERRARENS (International Federation of Christian Trade Unions).
- Category B:** Miss de ROMER (International Union of Womens' Catholic Leagues).
Mme DUCHESNE (World Democratic Federation of Women)
Mr. DUCHOSAL (International Red Cross Committee)
Mr. O.F. NOLDE (Commission of the Churches on International Affairs)
Mr. de FELICE (International Abolitionist Federation)
Mr. RIEGNER (World Jewish Congress)

Examination of the Report of the Ad Hoc Committee on Communications
(Document E/CN.4/64)

Mr. CASSIN (France), Rapporteur of the ad hoc Committee on Communications, submitted the Committee's Report.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) said that the terms in which the Report was drawn up were too general. It even seemed to imply an extension of the ad hoc Committee's powers and the possibility of its taking practical steps with regard to communications. At the Committee's meeting, he recalled, certain concrete proposals had been made, such as to transmit communications to members of the Commission, to treat communications as information for the use of the Commission, and to examine only those communications which emanated from groups and not from individuals. None of these concrete proposals was mentioned in the Report. He therefore proposed that the Report be re-drafted in the spirit of the Committee's meeting.

The CHAIRMAN pointed out that certain concrete proposals had, indeed, been submitted during the meeting of the ad hoc Committee on Communications, but that not all of them had been adopted. Only the proposals adopted were mentioned in the Report. She suggested that the decisions arrived at should be discussed in the first place.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) stressed the fact that his objection related not to the decisions as given in the Report but to the recommendations which, in his view, did not reflect the discussion which took place during the Committee's meeting.

Mrs. MEHTA (India) wished to know why the suggestions regarding Document E/CN.4/AC.5/2 were to be sent to the ad hoc Committee instead of to the Drafting Committee.

The CHAIRMAN stated that no action could be taken with regard to communications until the Economic and Social Council had reached

a decision on the matter. However, if the suggestions of the members of the Commission were transmitted to the ad hoc Committee, this would enable the latter to examine them prior to the next session. During that session, the Commission could if it had received the necessary authorization from the Economic and Social Council, proceed more freely to a consideration of the action to be taken with regard to communications.

Colonel HODGSON (Australia) observed that the list circulated by the Secretariat (Document A/CN.4/CR.1) stopped short at the month of October. He wondered whether members of the Commission were expected to base their suggestions solely on that list, which was already out of date.

Professor HUMPHREY stated that the Secretariat would prepare a new list before the next meeting of the ad hoc Committee. It was impossible, however, to communicate that list to the members of the Commission before the Committee's next session, in view of the instructions of the Economic and Social Council for its distribution in private meeting.

Mrs. MEHTA (India) asked whether it was desirable to refer the observations submitted by the members of the Commission to the ad hoc Committee.

The CHAIRMAN pointed out that suggestions dealing with the question of communications were not a matter for the Drafting Committee.

Mr. CASSIN (France) considered it only natural that observations should be submitted to the members of the Committee which had drawn up the relevant documents. Nevertheless, suggestions as to general principles could be referred to the Drafting Committee. The ad hoc Committee could sort out the suggestions sent to it, keeping those which concerned it and sending on to the Drafting Committee observations of a general nature.

The CHAIRMAN observed that this proposal should be expressly mentioned in the Report.

Colonel HODGSON (Australia) pointed out that according to its terms of reference, the ad hoc Committee could take no action on the observations and suggestions referred to it. It had only the power to recommend which communications, in original should be made available to the members of the Commission. In order, therefore, to enable the ad hoc Committee to carry out its task he proposed that a recommendation be submitted to the Economic and Social Council for the broadening of the Committee's terms of reference.

The CHAIRMAN pointed out that the ad hoc Committee had suggested to the Commission the adoption of a resolution urging the Economic and Social Council to reconsider the procedure for communications relating to human rights. This recommendation was contained in Section 5 of the Committee's Report. The solution advocated therein was not entirely satisfactory; but the Committee had felt that no other solution was possible until the Bill of Human Rights came into force.

Colonel HODGSON (Australia) held that the recommendation concerned the Commission as a whole and did not resolve the contradiction inherent in the Committee's decision. Since the Committee had no power, he considered it useless to refer to it observations and suggestions on which it could take no action.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) said that it did not rest with the Commission to take action concerning communications. Any recommendation by the Commission designed to broaden the ad hoc Committee's terms of reference so as to enable it to take practical steps regarding communications went beyond the Commission's own terms of reference and task. The Commission was not an international court. Communications should be regarded as information which might assist the Commission in drawing up

certain articles, such as Article 36, on Minorities, or the articles on women's rights. The proposal put forward by the Australian representative tended to transform the Commission into a judicial body with world-wide powers, whereas it had been established for the purpose of drawing up documents.

Mr. DEHOUSSE (Belgium) moved the deletion of Section 3, paragraph (b), of the ad hoc Committee's Report. He felt that the Commission ran the risk of beginning operations prematurely, whereas the Economic and Social Council had not yet reached any decision on the recommendation addressed to it by the Commission regarding the guaranteeing and safeguarding of human rights. Moreover, paragraph (b) introduced a source of difficulty by putting up the ad hoc Committee as a screen between the members of the Commission and the Drafting Committee, which should receive those members' suggestions.

The CHAIRMAN put to the vote the proposal to delete Section 3, paragraph (b), of the ad hoc Committee's report.

Decision: The Commission agreed to the proposed deletion by 8 votes, with 6 abstentions.

Dr. MALIK (Lebanon) drew attention to the Terms of Reference of the ad hoc Committee established by the Economic and Social Council in its Resolution of 5 August 1947 (No. 75 (v)), and in particular to the part charging the ad hoc Committee to recommend which of the communications, in original, in accordance with paragraph (c) of the Resolution, should be made available to Members of the Commission on request. He pointed out that the decision of the Committee had not taken that point into account and proposed that the following should be added to it as paragraph 2(b): "to recommend that the originals of the communications listed in Document E/CN.4/AC.5/2 should, in accordance with paragraph (c) of the Resolution of the Economic and Social Council of 5 August 1947, be made available to Members of the Commission on request".

Mr. CASSIN (France) felt that the proposal was not related to the decision taken by the ad hoc Committee but to the Recommendations it had made. He therefore asked that consideration of it should be deferred until paragraph 5 of the Recommendations was discussed. In his opinion, the ad hoc Committee had made a modest decision, and he pointed out that paragraph (b) was only meant to deal with general matters; it was not an attempt to deal with implementation in advance.

The CHAIRMAN also felt that the Lebanese proposal was out of place and she put to the vote paragraph 3(a) on page 2; it was adopted by 13 votes.

Dr. MALIK (Lebanon) said there appeared to be some misunderstanding regarding his proposal. He felt that the decision taken by the ad hoc Committee had not been complete, in that it had not taken into account part of the Terms of Reference. His proposal was made for the purpose of rectifying that omission. He pointed out that the Commission had decided to delete part of the decision; it ought therefore to be possible to add to it.

Colonel HODGSON (Australia) was of the opinion that the representative of Lebanon was out of order. He recalled that the document under discussion was the Report of the ad hoc Committee. The Commission could not amend it and then adopt it as the Committee's Report. In his opinion, the part of the Terms of Reference referred to by Dr. Malik constituted a duty of the Committee and, as such, he could see no necessity for taking a decision on it.

Professor HUMPHREY (Director of the Human Rights Division) stated that he interpreted paragraph (c) of the Resolution of the Economic and Social Council of 5 August 1947 to mean that the Secretary General was at the present time authorised to exhibit to Members of the Commission on request all communications dealing

with matters of principle. It seemed to him that the Lebanese proposal would, in effect, limit the Secretary General's powers in that respect, as it referred only to Document E/CN.4/AC.5/2, which was not a complete list dealing with communications.

Dr. MALIK (Lebanon) again pointed out that his Resolution had been made for the purpose of rectifying an omission on the part of the ad hoc Committee. To meet the point raised by Professor Humphrey, he proposed that the words "without prejudice to the powers conferred upon the Secretary General in paragraph (b) of the said Resolution" should be added at the end of his original proposal.

The CHAIRMAN put the Lebanese proposal to the vote; it was accepted by 9 votes to 1, with 5 abstentions.

Mr. DEHOUSSE (Belgium), with a view to expediting proceedings, requested that the Chairman should revert to the ruling previously prevailing that there should be one speaker for and one speaker against each motion.

The CHAIRMAN directed attention to the decisions taken on the Recommendations of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, and asked for observations on paragraph 4.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) moved that paragraphs 4 and 5, as contained on page 2, should be deleted; he was in favour of retaining only the Recommendation dealing with measures to be put into effect immediately.

The CHAIRMAN put the Soviet Union proposal to the vote; it was rejected by 7 votes to 4, with 4 abstentions.

She then put to the vote the first recommendation of the Sub-Commission, contained in paragraph 4 on page 2; it was accepted by 11 votes with 3 abstentions.

Mr. CASSIN (France) supported the Recommendation in paragraph 5 and pointed out that it did not imply any suggestion to increase the powers of the ad hoc Committee; it was merely a resolution based on the discussions which had taken place.

Dr. MALIK (Lebanon) said he was dissatisfied with the Preamble to the Recommendation, because it did not give a clear idea of the position he had taken up during the discussions of the ad hoc Committee concerning the transmission of communications. He therefore wished to put his views on record. He felt that the existing system whereby Members of the Commission had not the right to see certain communications on human rights coming to the United Nations was most unsatisfactory. He drew attention to the Terms of Reference, which included the phrase "All matters relating to human rights not mentioned above". In his opinion, it was strange that the Members of the Commission could not see certain communications, and he did not believe that the existing system permitted it to carry out its Terms of Reference.

The CHAIRMAN put to the vote the second Recommendation of the Sub-Commission contained in paragraph 5 on pages 2 and 3; it was accepted by 11 votes with 4 abstentions.

She stated that the Report of the ad hoc Committee was therefore adopted.

2. Consideration of the Report of the Sub-Committee appointed to examine the Human Rights Yearbook, the Report of the War Crimes Commission and to study the Evolution of Human Rights (Document E/CN.4/63).

Mr. LOUTFI (Egypt) submitted the Sub-Committee's report and summarised its contents.

The CHAIRMAN suggested that the Commission should take note of the report as a whole and transmit it to the Economic and Social Council.

Dr. WU (China) supported the Sub-Committee's report and thought that the Commission should not only take note of it but should formally approve it.

Colonel HODGSON (Australia) asked whether the section on Constitutions was to include only provisions relating to suffrage. He thought that, in drafting the Yearbook, the historical notes, mentioned on page 3 of the Sub-Committee's report, should be included in the section dealing with Constitutions. With regard to Section II of the report, he thought that a decision should be made by the Commission on the subject of the publication of the report of the War Crimes Commission.

Mr. LOUTFI (Egypt) replied that all texts connected with human rights and not only those dealing with suffrage would be included in the section on Constitutions. He agreed that in the drafting of the Yearbook brief historical notes should be added in the section dealing with Constitutions.

Dr. WU (China) thought that some readers might prefer to have the notes in a separate section. He suggested that the report should be adopted without further discussion.

The CHAIRMAN thought that the question of arranging the subject matter could be left to the Secretariat.

Colonel HODGSON (Australia) proposed that the last paragraph of Section II of the Sub-Committee's report be replaced by the following:

"The Commission recommends that the Secretariat prepare for publication in summarised form the survey prepared by the War Crimes Commission on trials of war criminals." He explained that the survey in question was very long and that if the Commission published it in full it would mean that any subsequent surveys would also have to be published in full.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) opposed Colonel HODGSON's proposal. He had not had time to read the survey in question and he thought that the Commission should not take any decision with regard to its publication until the third session.

The CHAIRMAN put the Australian proposal to the vote: it was rejected by 7 votes to 5 with 2 abstentions.

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) urged that in the Human Rights Yearbook the texts of laws concerning human rights should be inserted not in the form of extracts, but in their entirety; that the Articles of the Constitution of the Union of Soviet Socialist Republics and of the Federated Republics concerning human rights should be published in full; that the Soviet Union's Declaration of Human Rights should be inserted in extenso; that the text of the law for the abolition of the death penalty should be reproduced in its entirety; and, lastly, that the commentaries on national legislation should in every case be prepared by legal experts of the country concerned.

Mr. VICTORICA (Uruguay) suggested that the sections of the Report dealing with the texts of constitutions relating to human rights should be interpreted in a broad spirit. Such texts should not be confined to human rights, but should cover the field of duties and guarantees, such as, for example, the responsibilities of officials, the pecuniary responsibility of public persons, and appeal to the Supreme Court.

Mr. CASSIN (France) said that his delegation desired to be very moderate on the subject of extending the survey to questions of jurisprudence. He feared that that would impose an excessive burden on the Secretariat, in view of the staff and budgetary position. He proposed the amendment of Section II, sub-section 2

on page 4 of the Report (document E/CN.4/63), substituting the following text:

"The survey should comprise judgments rendered at any time whatsoever in countries not already covered by the document prepared by the War Crimes Commission. It should therefore have a supplement dealing with judgments rendered subsequent to the completion of the work."

He based his amendment on the fact that the Kharkov trial had taken place in the meantime, that the Cracow trial was in progress, as well as several others in Eastern Europe, and that at that moment German industrialists and intellectuals were appearing before the Nuremburg Court.

Mr. DEHOUSSE (Belgium) observed that several proposals had been made, by the Soviet Union and other delegations, which destroyed the publication system devised by the Secretariat experts. He supported Mr. Bogomolov's request that the survey of national legislation should be entrusted to experts in each country. This suggestion had in any case been clearly expressed in Section I, sub-section II, paragraph 3, on page 2 of the Human Rights Yearbook Committee's Report.

The CHAIRMAN put the French representative's amendment to the vote.

Decision: The amendment was adopted by nine votes to five.

Dr. MALIK (Lebanon) asked to what extent the Secretariat would be bound by the many questions and suggestions which the Yearbook Sub-Committee had referred to it.

The CHAIRMAN observed that the Commission would not be called upon to vote on every question raised in the Report, but would merely have to approve or disapprove of the texts submitted by the Sub-Committee. The Secretariat would be bound by the suggestions set forth in the budgetary lists.

Dr. MALIK (Lebanon) failed to understand why the Sub-Committee in Section III of its Report urged the Economic and Social Council to postpone the survey of the development of human rights.

The CHAIRMAN replied that the decision would rest with the Economic and Social Council. If certain members disagreed, they should say so now.

Dr. MALIK (Lebanon) hoped the Secretariat would do its utmost to put the survey in hand, and urged that it should include, by way of introduction, not only the basic documents relating to human rights, but also others relating to the United Nations Declaration and various speeches made by statesmen during the war, above all, the speech by Field-Marshal Smuts at the San Francisco Assembly.

The CHAIRMAN suggested that this remark be added to the Report.

Mr. CASSIN (France) shared the sentiments underlying Dr. Malik's proposal, especially as he was himself the originator of the plan for the historical survey of human rights.

The Sub-Committee had merely proposed a programme of work, since it was materially impossible for the Secretariat to carry out this programme at the present time. He urged the Commission to approve Section III of the Report, which took actual conditions into account.

The CHAIRMAN put to the vote a motion approving the Report of the Human Rights Yearbook Sub-Committee, for transmission to the Economic and Social Council.

Decision: The Report was approved by ten votes, with four abstentions.

Discussion of the proposals submitted by the Minorities Sub-Commission.

The CHAIRMAN opened the discussion on the proposals submitted by the Minorities Sub-Commission (document E/CN.4/68). She

pointed out that the document, which contained a systematic classification of a certain number of decisions by the Sub-Commission, had been prepared by the Secretariat in order to facilitate the Commission's work. She read out the recommendation made by the Sub-Commission to the Human Rights Commission:

"That the Economic and Social Council be moved to request the Secretary-General to organize studies and prepare analyses designed to assist this Sub-Commission in determining the main types of discrimination which impede the equal enjoyment by all of human rights and fundamental freedoms, and the causes of such discrimination.

He will consider whether any groups involved are of recent or long historical origin, and whether in the past they have been in the nature of active protesting minorities.

Such statement to be made available to Delegates to the Sub-Commission on Minorities and Discrimination."

If the Commission accepted this proposal, the text of the recommendation should be worded as follows:

"The Human Rights Commission requests the Economic and Social Council to instruct the Secretary-General, etc."

Dr. WU (China) supported the proposal.

Decision: The proposal was adopted by eight votes to four.

The CHAIRMAN put to the vote paragraph 2, which read:

"2. Minorities.

The Sub-Commission considers that in order satisfactorily to fulfil its task and effectively to protect minorities, it must have at its disposal, for purposes of its future work, all information that it may require in order to distinguish between genuine minorities and spurious minorities which might be created for propaganda purposes.

It therefore recommends the Commission on Human Rights to secure the adoption by the Economic and Social Council of such measures as are necessary to this end."

If the Commission accepted this proposal, the text of the recommendation should be drafted as follows:

"The Commission on Human Rights considers that in order satisfactorily to fulfil its task etc.

It therefore requests the Economic and Social Council to adopt such measures as are necessary to this end."

Dr. MALIK (Lebanon) criticised the form in which the text was drafted. It gave the impression that the Commission or the Sub-Commission was charged with the task of taking steps "effectively to protect minorities". He formally moved the deletion of the words "and effectively to protect minorities."

Mr. CASSIN (France) considered on the contrary that these words should be retained, especially as, according to the Sub-Commission's title, it was intended for the "protection of minorities."

Mr. BOGOMOLOV (Union of Soviet Socialist Republics) said that he would vote against the text, which was couched in peculiar language. The words "genuine minorities" and "spurious minorities" were concepts which did not answer to the facts.

The CHAIRMAN put to the vote the text of the Sub-Committee's recommendation, as amended by Dr. Malik.

Decision: The text was adopted by nine votes to four, with one abstention.

The meeting rose at 1.05 p.m.